Filed 4/26/19 Forte v. The Village Green Owners Assn., Inc. CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| DIANE FORTE,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>THE VILLAGE GREEN OWNERS ASSOCIATION, INC.,<br><br>Defendant and Respondent. | B286262<br><br>(Los Angeles County Super. Ct. No. BC583495) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Broadbelt, Judge. Affirmed.

The Law Offices of Kenneth Townsend, Kenneth Townsend for Plaintiff and Appellant.

Hartsuyker, Stratman, & Williams-Abrego, Paul A. Carron; Veatch Carlson, Serena L. Nervez for Defendant and Respondent.

## INTRODUCTION

Plaintiff and Appellant Diane Forte (Forte) walked out the front door of her home at the Village Green condominium complex, in search of her cat. As she made her way along a nearby walkway, she slipped and fell. Although she sued her homeowners' association, Defendant and Respondent The Village Green Homeowners Association, Inc. (Village Green) for negligence and premises liability, alleging she "fell on a pile of wet twigs, branches, leaves and sprinkler," she conceded at her deposition she has no idea what – if anything – caused her fall. After she fell, her right foot "slid into the sprinkler" but she has no proof the sprinkler caused or contributed to her injuries.

Not surprisingly, Village Green moved for summary judgment, since Forte had no evidence of what caused her to fall or sustain injuries. In opposition, Forte conceded she could not identify what exactly caused her to fall, but claimed the sprinkler was a substantial factor. Village Green made several evidentiary objections to evidence submitted in opposition to summary judgement. The trial court sustained all of them and granted summary judgment. We affirm.

## STANDARD OF REVIEW

"A party is entitled to summary judgment only if there is no triable issue of material fact and the party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. (*Id*., subd. (p)(2).) If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material

fact. (*Ibid*.) A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 . . .)

"We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460 . . .) We must affirm a summary judgment if it is correct on any of the grounds asserted in the trial court, regardless of the trial court's stated reasons. [Citation.]" (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 636-637.)

**DISCUSSION**

Forte contends the court erred in granting summary judgment because it failed to consider the above-ground sprinkler as a concurrent cause of her injury. We disagree.

To establish the causation element of a negligence claim, plaintiff must show defendant's act or omission was a substantial factor in bringing about the injury. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 778.)

During her deposition, Forte repeatedly testified she did not know what she slipped on, stating: "I mean it felt like it could have been something like what's in this picture [showing dried leaves or twigs] but I honestly don't know." She similarly testified she did not know what was in the walkway where she fell: "I can't sit here today and tell you specifically what was in the walkway or what wasn't there. I don't know."

Acknowledging she cannot identify the initial cause of her fall, Forte focuses on a second purported cause of her injury – an above-ground sprinkler. Forte's interrogatory response states she "lost her footing on the debris and slid into the above-ground sprinkler, thereby suffering serious injury to her ankle." The portion of the response relating to "debris" is inconsistent with her admission she does not know what she slipped on. To the extent the interrogatory response implicates the sprinkler as a cause of her injuries, it is conclusory. Thus, the burden of proof shifted to Forte to set forth specific facts proving the existence of a triable issue of material fact. (*Union Bank v. Superior Court* (1995) 31 Cal. App. 4th 573, 590.) Forte testified she "slid into the sprinkler" and "fell backwards" but failed to provide testimony (either her own or of an expert) raising a triable issue that the sprinkler caused or contributed to her injury.

Forte further contends the court erred in failing to shift the burden of disproving causation to Village Green because Village Green could not identify the last time its landscaping company cleaned the property. However, the burden of proof shifts only "when there is a substantial probability that the defendant's negligence was a cause of an accident, and when the defendant's negligence makes it impossible, as a practical matter, for plaintiff to prove 'proximate causation' conclusively . . ." (*Thomas v. Lusk* (1994) 27 Cal.App.4th 1709, 1717.) Because Forte offered no admissible evidence that she slipped on debris, maintenance logs (even if they existed) could not prove causation. At most, they would provide a basis for Forte to speculate she might have fallen on debris.

Alternatively, Forte seeks to excuse her failure to present evidence of causation, arguing the court erred in sustaining

Village Green's evidentiary objections. Although our Supreme Court has not resolved the standard of review for summary judgment evidentiary rulings (*see Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535), "[a]ccording to the weight of authority, appellate courts 'review the trial court's evidentiary rulings on summary judgment for abuse of discretion.'" (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852.) We discern no error under either a de novo or abuse of discretion standard.

The court sustained Village Green's objections to: (1) Village Green newsletters (May 2017 and February 2017); (2) Village Green landscape report and structures report, dated December 2013 and May 2010 respectively; (3) copies of Los Angeles Municipal Code sections regarding above-ground sprinklers and City of Camarillo landscape and irrigation guidelines; (4) an email from Tamorah Thomas, a member of the Village Green tree and landscape committees, to Forte regarding issues with Village Green's landscaping company; and (5) a hospital patient summary report from the day of Forte's fall stating Forte "tripped over branches and sprinkler head."

Forte argues the newsletters, landscape/structures reports, and email from Ms. Thomas demonstrate the property was poorly maintained and had an outdated sprinkler system. Evidence that the property maintenance was below average or the sprinkler system was outdated, however, is not relevant to proof of causation because Forte did not link those issues to her fall or injuries. As discussed above, Forte testified she did not know whether there was debris in front of her house on the day she fell and does not know what made her fall. (*See e.g. Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729, 734 ["[c]onjecture that the floor might have been too slippery at the location where appellant

happened to fall is mere speculation which is legally insufficient to defeat a summary judgment"].)

Similarly, the Los Angeles Municipal Code sections and Camarillo landscape and irrigation guidelines are irrelevant. First, Village Green is not governed by these code sections and guidelines. Because the sprinkler did not abut a "street, sidewalk or parkway," it is not covered by Los Angeles Municipal Code section 56.08, subd. (e). And, the property is not within Camarillo city limits, so that City's guidelines are irrelevant. Second, even if the sprinkler was negligently placed, a triable issue is not created where, as here, the record contains no evidence demonstrating the sprinkler caused or exacerbated Forte's injuries. (*See Buehler, supra,* 224 Cal.App.3d at p.734.)

Lastly, the hospital patient summary report is inadmissible hearsay. (Evid. Code, § 1200.) The report contains statements Forte allegedly made to a nurse on the day of the accident when she arrived at the emergency room. Contrary to Forte's contentions, a statement made after arriving at the emergency room, without any evidence Forte was still under "stress of excitement" when making the statement, does not qualify for the spontaneous utterance exception to the hearsay rule. (Evid. Code, § 1240.)

## DISPOSITION

The judgment is affirmed. Village Green is awarded its costs on appeal.

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CURREY, J.

WE CONCUR:

WILLHITE, acting P. J.

COLLINS, J.